upon arbitrary conditions.[17] Or, if we regard this tax as on the privilege of succeeding to the decedent's membership in a New York entity, it is equally a privilege tax. The legislature may prescribe any mode of measurement of the price of its privilege. A 5 per cent tax upon a total valuation cannot be more obnoxious than a 30 per cent tax upon a one-sixth valuation. Moreover, in view of federal tolerance of state inheritance taxes on bequests to the United States [18] and bequests of United States bonds,[19] the question of unconstitutional burdening of interstate commerce seems scarcely arguable.

REVOCATION OF JOINT WILLS. — Joint wills, as regards the extent to which the law will enforce them, may be divided into three classes: *a*, joint wills of joint or separate property with no time stated as to when they shall take effect; *b*, joint wills of joint property, or separate property treated as joint, to take effect at the death of the survivor; *c*, joint reciprocal wills in which each testator provides that when he dies his property shall go to his co-testator, and sometimes after his death to an ultimate beneficiary. Through these three classes there runs a dividing line separating those in which a contractual relation is involved from those in which it is not.

Because of the nature of a will, in that it can take effect as to only the testator's property and only at his death, a will can never be really joint in the same sense as a contract. From this fact sprang the antipathy of early courts to joint wills, and the tendency of modern courts, following the intention of the parties, to treat them as separate wills by each testator. By the older theory joint wills, like joint contracts, were considered irrevocable by one party alone because of their joint quality, and therefore the decisions held that, since wills were necessarily revocable, these joint instruments could not be wills.[1] These difficulties have been obviated by the newer theory, which, wherever possible, regards the instrument as joint only in the manner of execution, but revocable by either party as to his share and admissible to probate on the death of either party as his will. This view is not found possible in the instruments of class *b*, and since they cannot be effectuated they are generally held void.[2] The wills of class *a* it is almost always possible to regard as separable, and they are accordingly revocable by either testator, without notice, either before or after the death of his co-testator.[3] In the case of class *c* it has been held that the will may be revoked by either testator as to his share, during the lives of both,[4] although notice is usually required so that the other testator may withdraw his will also.[5] Even after the death of one testator and the acceptance by the other of the benefits under the decedent's will, the survivor has been allowed to revoke his will and shut out the ultimate residuary legatee of both wills.[6]

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[17] Magoun *v.* Ill. Trust & Savings Bank, 170 U. S. 283. But see Nunnemacher *v.* State, 108 N. W. Rep. 627 (Wis.).

[18] United States *v.* Perkins, 163 U. S. 625.

[19] Plummer *v.* Coler, 178 U. S. 115. See Beale, Foreign Corp., § 763.

[1] See Hobson *v.* Blackburn, 1 Add. Eccl. 274; Clayton *v.* Liverman, 2 Dev. & B. (N. C.) 558.

[2] State Bank *v.* Bliss, 67 Conn. 317; Hershy *v.* Clark, 35 Ark. 17; Dennyson *v.* Clostert, L. R. 4 P. C. 236.

[3] See Hill *v.* Harding, 92 Ky. 76, 80; Matter of Raupp, 10 N. Y. Misc. 300; Betts *v.* Harper, 39 Oh. St. 639.

[4] Schumaker *v.* Schmidt, 44 Ala. 454.

[5] See *Ex parte* Day, 1 Bradf. Sur. (N. Y.) 476.

[6] Cawley's Estate, 136 Pa. St. 628.

These results seem inevitable in the case of group *c*, unless we adopt the view that a joint will presumptively implies a contract to keep the will unrevoked.[7]

Turning to joint wills where a contractual relation is involved, it would seem as a matter of fact that a contract to keep the will unrevoked may well be inferred in all cases of joint reciprocal wills unless something to show a contrary intention appears. Unlike the agreement to make a will, this contract should be susceptible of breach by a revocation of the will during the lives of the parties. There are, however, several dicta, following an early English case on this point, to the effect that, even where a contract may be implied, the will is revocable as to his share by either testator, giving notice to the co-testator.[8] Yet if one revoked without notice and died, clearly equity would enforce the agreement against his estate.[9] Or if one testator died and the other accepted the benefits of the will, the agreement should be enforced against the survivor like a promise for good consideration to make a will. Though equity here as always would be loath to declare a revoking will void, yet, in case of a breach as by a fraudulent conveyance by the survivor, it might, during his life, at the instance of the beneficiaries impress upon his property the liability to answer for the contract.[10] At any rate, after the death of the survivor who has accepted the benefits of the co-testator's will and then revoked his part of the will, equity according to a recent decision will give the beneficiaries under the original will a remedy against voluntary transferees of the survivor's property to the extent of their interest under the will. *Bower* v. *Daniel*, 95 S. W. Rep. 347 (Mo., Sup. Ct.). It follows, of course, that they would have a remedy against his estate in the nature of specific performance.[11] Similarly, instruments like that in class *a*, when the circumstances show they were made in accordance with a contract, should be enforceable in the same manner as the joint reciprocal wills chiefly discussed.

OUSTER OF MUNICIPAL OFFICERS. — A constitutional or statutory enactment that any public officer shall fulfill certain requirements cannot be overridden even by popular vote. This is true when a condition precedent is demanded,[1] — for example, that the officer must be twenty-one years of age, — or when specified acts of misconduct in office are declared to work a forfeiture of the term.[2] In the former case the person elected in disregard of the condition becomes at most a *de facto* officer; while in the latter, if guilty of the forbidden acts, he continues to be a *de jure* officer until removed. In both cases the province of the courts in *quo warranto* is merely to determine a question of fact, — whether there has been a compliance with the legislative requirements.

A more difficult question grows out of the second class of cases, when,

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[7] See Dufour *v.* Pereira, 1 Dick. 419; Clayton *v.* Liverman, 2 Dev. & B. (N. C.) 558, 563.

[8] See Dufour *v.* Pereira, *supra;* Edson *v.* Parsons, 155 N. Y. 555, 566; Duvale *v.* Duvale, 54 N. J. Eq. 581, 588.

[9] See Edson *v.* Parsons, 85 Hun (N. Y.) 263.

[10] Dufour *v.* Pereira, *supra;* Carmichael *v.* Carmichael, 72 Mich. 76. See Duvale *v.* Duvale, *supra.*

[11] *Cf.* Bolman *v.* Overall, 80 Ala. 451.

[1] Spear *v.* Robinson, 29 Me. 531; State *ex rel.* Staes *v.* Gastinel, 20 La. Ann. 114.

[2] People *ex rel.* Atty.-Gen. *v.* Heaton, 77 N. C. 18.